

Message Text

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ACTION EUR-25

INFO OCT-01 IO-15 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10

L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01 SPC-03 SS-15

USIA-15 ACDA-19 MBFR-04 SAJ-01 AEC-11 SCI-06 DRC-01

EA-11 /165 W

----- 099750

R 281733Z SEP 73 ZDK

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7712

INFO USMISSION EC BRUSSELS

USMISSION IAEA VIENNA

C O N F I D E N T I A L SECTION 01 OF 02 BONN 14103

E.O. 11652: GDS

TAGS: PARM

SUBJECT: NPT RATIFICATION: IMPORTANT CDU DEPUTY SEEKS
US GUIDANCE

BEGIN SUMMARY. CDU BUNDESTAG DEPUTY KURT BIRRENBACH HAS SOUGHT GUIDANCE FROM EUGENE ROSTOW REGARDING "EUROPEAN SUCCESSION" PROBLEM. BIRRENBACH'S QUESTION AND ROSTOW'S COMMENTS IN LETTER TO AMBASSADOR HILLENBRAND ARE SET FORTH BELOW. BIRRENBACH'S POSITION WITHIN CDU CAUCUS COULD HAVE DECISIVE EFFECT ON CDU NPT VOTE. ACTION REQUESTED: EARLY DEPARTMENT GUIDANCE TO US AND TO ROSTOW ON QUESTIONS RAISED BY BIRRENBACH. END SUMMARY

1. IN SEPT. 14 LETTER FROM BIRRENBACH TO ROSTOW, A COPY OF WHICH WAS FORWARDED TO THE AMBASSADOR BY ROSTOW, THE FOLLOWING PASSAGES APPEARS. BEGIN TEXT. THE MAIN POINT OF MY LETTER, HOWEVER, IS THE QUESTION WE HAD DISCUSSED IN BRUSSELS: THE EUROPEAN OPTION. I HAVE RE-READ THE AMERICAN INTERPRETATION WHEN THE UNITED STATES HAD CONCLUDED THE NPT, AND SECRETARY ROGERS' INTERPRETATION
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WHEN OUR GOVERNMENT (PREMATURELY) SIGNED THE TREATY IN

1969 WITHOUT HAVING CLEARED ALL OPEN POINTS. THE ROGERS INTERPRETATION, OF COURSE, IS LESS IMPORTANT THAN THE OTHER ONE. THIS ONE GOES SO MUCH INTO DETAILS AND CONTAINS THREE TIMES THE WORD "FEDERATED STATE", THAT I DOUBT WHETHER YOUR PERSONAL INTERPRETATION OF THE EUROPEAN OPTION ON THE BASIS OF THE THEORY OF SUCCESSION OF STATES CAN BE APPLIED BY THE EUROPEAN STATES IN THE CASE THAT THE AMERICAN NUCLEAR UMBRELLA SHOULD LOSE STILL MORE OF ITS SHADOW GIVING CAPACITY. I HOPE TO GET THE BOOK BY O'CONNEL "THE LAW OF STATE SUCCESSION", 1956, YOU MENTIONED TO ME. I WILL BE STUDYING THIS DIFFICULT QUESTION OF THE EUROPEAN OPTION IN RELATION TO THE SIXTH AMERICAN INTERPRETATION AND THE PROBLEMS OF STATE SUCCESSION IN INTERNATIONAL LAW IN SOME DEPTH. THEREFORE, I WOULD BE VERY GRATEFUL, INDEED, IF YOU COULD GIVE ME SOME ADDITIONAL INDICATION ON THIS QUESTION, ESPECIALLY ON YOUR IDEA OF BRUSHING AWAY THE SIXTH AMERICAN INTERPRETATION BY AN INTERNATIONAL LAW THEORY. IN PARTICULAR I WOULD BE INTERESTED TO HAVE YOUR REACTION WITH RESPECT TO THE DIFFICULT QUESTION AT WHAT STAGE IN THE LONG PROCESS OF EUROPEAN FEDERATION EUROPE WOULD BE LINKED CLOSELY ENOUGH TO HAVE THE RIGHT UNDER THE NPT TO ACQUIRE NUCLEAR WEAPONS. YOUR INFORMATION ON THESE POINTS MIGHT HELP US TO JUMP OVER THE TERRIBLE HURDLE OF THE FORMER TOO FAR-REACHING AMERICAN RESTRICTIONS OF THE EUROPEAN OPTION. I DO NOT NEED TO TELL YOU THAT I KNOW THAT A EUROPEAN UNION OR SOMETHING LIKE THAT IS NOT AROUND THE CORNER. BUT AS THE CONFERENCE IN COPENHAGEN SHOWED, WE ARE MAKING SOME PROGRESS IN THIS DIRECTION. I SHOULD LIKE TO HAVE A CLEARER UNDERSTANDING OF THIS SPECIFIC PROBLEM. IF YOU COULD ANSWER THESE QUESTIONS WITHIN THE NEXT WEEKS, I WOULD BE VERY GRATEFUL TO YOU, BECAUSE MY PARTY PREPARES NOW ITS POSITION FOR THE DECISION ON THE RATIFICATION OF THIS TREATY. END TEXT.

2. ROSTOW MAKES THE FOLLOWING COMMENT ON THIS QUESTION IN HIS LETTER TO THE AMBASSADOR. BEGIN TEXT. IN 1967

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PM-07 INR-10 L-03 NSAE-00 NSC-10 PA-03 RSC-01 PRS-01

SPC-03 SS-15 USIA-15 ACDA-19 NIC-01 AEC-11 SCI-06

DRC-01 /152 W

----- 096339

R 281746Z SEP 73

FM AMEMBASSY BONN

TO SECSTATE WASHDC 7713

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 14103

AND 1968, AND THEN LATER, I ASSURED HIM AND THE GERMAN GOVERNMENT PEOPLE THAT IN MY VIEW THE RUSK-ROGERS TESTIMONY ON N.P.T. MEANT THAT THE DOCTRINE OF STATE SUCCESSION WAS AVAILABLE TO MAKE "EUROPE" A NUCLEAR POWER IF A "EUROPE" WERE EVER TO BE FORMED, AND IF IT WANTED THAT STATUS UNDER THE TREATY; AND THAT "SUCCESSION," LIKE RECOGNITION, THE EXISTENCE OF STATES, ETC., WAS A MATTER OF JUDGMENT BY LEADING MEMBERS OF THE INTERNATIONAL COMMUNITY. IF, FOR EXAMPLE, AN IMPORTANT GROUP OF STATES DEEMS NORTH VIETNAM, OR ISRAEL, OR EAST GERMANY, TO BE A "STATE," BY THE USUAL CRITERIA, AND RECOGNIZES IT DIPLOMATICALLY, OR TREATS IT OTHERWISE AS A "STATE" (I.E., IRAN'S RELATION WITH ISRAEL), THEN IT IS A STATE, FOR PURPOSES AMONG OTHERS OF THE DOCTRINE OF SUCCESSION. I SHALL HAVE TO ANSWER KURT SHORTLY. PLEASE GIVE ME GUIDANCE. END TEXT.

3. BIRRENBACH ALSO MAKES THE FOLLOWING FURTHER POINTS IN HIS LETTER TO ROSTOW. BEGIN TEXT. AS YOU KNOW, THE NON-PROLIFERATION TREATY (NPT) IS ABOUT TO BE SUBMITTED FOR RATIFICATION IN THE DEUTSCHE BUNDESTAG. I HAVE BEEN RAPPORTEUR FOR THIS TREATY BEFORE IT WAS SIGNED IN CONFIDENTIAL

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1969, WHEN THE NEW COALITION IN GERMANY HAD WON THE ELECTIONS AND FORMED THE GOVERNMENT. IN MY TIME I HAD ALWAYS ACCEPTED THE BASIC IDEA BEHIND THIS TREATY, BUT WITH TWO QUALIFICATIONS: FIRST, THAT THE PEACEFUL USE OF ATOMIC ENERGY SHOULD NOT BE JEOPARDIZED OR PLACED UNDER UNNECESSARY RESTRAINTS; SECOND, THAT AN OPTION FOR A FUTURE UNITED EUROPE SHOULD REMAIN OPEN. WITH RESPECT TO THE FIRST ASPECT, THE TREATY AND THE VERIFICATION AGREEMENT MORE OR LESS CORRESPOND TO THE EXPECTATIONS I HAD AT THAT TIME. AS A MATTER OF FACT, I REGRET THAT

FRANCE HAS NOT ACCEPTED THE MANDATE FOR THE EUROPEAN COMMISSION TO NEGOTIATE WITH THE IAEA AND IS ONLY READY TO ACCEPT THE VERIFICATION BY THE IAEA FOR SOME REACTORS AND PLANTS FOR THE ENRICHMENT OF URANIUM OF HER CHOICE. THE BRITISH ATTITUDE, AS FAR AS BRITISH INSTALLATIONS FOR PEACEFUL USES OF NUCLEAR ATTITUDE ARE CONCERNED, HAS BEEN A VERY FAIR ONE. I CANNOT DENY, HOWEVER, THAT THE UNITED STATES APPARENTLY ARE ABOUT TO QUALIFY THEIR ORIGINAL OFFER TO SUBMIT THEIR INSTALLATIONS FOR CIVIL USES OF NUCLEAR ENERGY TO THE FULL CONTROL OF IAEA. THIS ORIGINAL PLEDGE SEEMS TO HAVE LOST ITS VALIDITY. THIS IS A VERY SERIOUS MATTER, BECAUSE THE UNITED STATES, JAPAN, GERMANY, GREAT BRITAIN AND FRANCE ARE COMPETITORS IN THE WORLD MARKET FOR NUCLEAR EQUIPMENTS. FURTHERMORE THE US DEMAND THAT ITS CUSTOMERS INDICATE THEIR NEEDS FOR ENRICHED URANIUM EIGHT YEARS IN ADVANCE IS ALSO A SOURCE OF SOME CONCERN OVER HERE, NOT TO MENTION THE LIBERTY TO FIX PRICES WHEN YOU ARE IN A MONOPOLISTIC POSITION AS A SUPPLIER. THE SOVIETS BY OFFERS OF THEIR OWN HAVE NOW ENTERED INTO THE VACUUM WHICH YOU ARE ABOUT TO CREATE BY THIS POLICY OF SUPPLY. I PERSONALLY WOULD NOT ACCEPT THE SOVIET OFFERS. WHETHER THIS WILL BE THE CASE IN THE FUTURE, IS ANOTHER QUESTION. WHETHER THIS IS IN THE INTEREST OF YOUR COUNTRY OR NOT, I LEAVE TO YOUR JUDGEMENT. THERE ARE STILL OTHER POINTS WITH RESPECT TO FUTURE TECHNICAL DEVELOPMENTS (LASER, FUSION ENERGY ETC), WHICH ARE STILL NOT QUITE CLEAR. BUT IN GENERAL I WOULD SAY, IF THESE MATTERS ARE SETTLED, WE CAN SURVIVE WITH THIS TREATY AS FAR AS THE PEACEFUL USE OF ATOMIC ENERGY IS CONCERNED. END TEXT.

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4. COMMENT. WE CONSIDER IT TO BE IN THE US INTEREST THAT THE GERMAN BUNDESTAG RATIFY THE NPT AND THE EURATOM/IAEA VERIFICATION AGREEMENT WITH THE GREATEST POSSIBLE DEGREE OF UNANIMITY. THE RECENT ATTACKS ON THE NPT BY CSU LEADER STRAUSS AND THE QUESTIONS RAISED ABOVE BY BIRRENBACH, A RESPONSIBLE AND INFLUENTIAL CDU BUNDESTAG DEPUTY, SHOULD THEREFORE BE TAKEN SERIOUSLY. WE REQUEST EARLY DEPARTMENT GUIDANCE ON THE ISSUES RAISED ABOVE SO THAT WE MAY DISCUSS THESE POINTS WITH BIRRENBACH. WE ALSO REQUEST THAT THE DEPARTMENT PROVIDE GUIDANCE TO ROSTOW, AT THE YALE LAW SCHOOL, ASAP SO THAT ROSTOW MAY REPLY PROMPTLY TO BIRRENBACH'S LETTER.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 28 SEP 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973BONN14103
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: RR
Errors: N/A
Film Number: n/a
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t1973091/aaaaaasl.tel
Line Count: 221
Locator: TEXT ON-LINE
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 31 JUL 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31-Jul-2001 by boyleja>; APPROVED <18-Sep-2001 by morefirh>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: NPT RATIFICATION: IMPORTANT CDU DEPUTY SEEKS US GUIDANCE
TAGS: PARM
To: SECSTATE WASHDC EC BRUSSELS IAEA VIENNA
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005